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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.C., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

L.C.,

Defendant and Appellant.

E047767

(Super.Ct.No. RIJ113921)

OPINION

APPEAL from the Superior Court of Riverside County. Gary Vincent, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Grace Clark, under appointment by the Court of Appeal, for Defendant and Appellant.

Pamela J. Walls, County Counsel, and Anna M. Deckert, Deputy County Counsel, for Plaintiff and Respondent.

Michael D. Randall, under appointment by the Court of Appeal, for Minor.

I. INTRODUCTION

L.C. (mother) appeals from an order of the juvenile court terminating her parental rights to her daughter, A.C.,¹ under Welfare and Institutions Code section 366.26.

Mother contends the trial court erred in finding that the Indian Child Welfare Act (ICWA) did not apply because adequate notice was not given. Respondent Riverside County Department of Public Social Services (Department), joined by counsel for minor, contends the ICWA notice was adequate and urges us to affirm the order of the juvenile court. We find that any error was harmless, and we affirm.

II. FACTS AND PROCEDURAL BACKGROUND

A. Current Proceedings

Mother was herself a 16-year-old dependent minor in foster care² when she gave birth to A.C. in January 2007. In March 2007, the Department filed a petition alleging under section 300, subdivision (b) that mother had placed A.C. at substantial risk of suffering serious physical harm by (1) failing to ensure that A.C.'s basic needs had been met, (2) leaving home without ensuring supervision for A.C., and (3) failing to benefit from services offered.

¹ Also referred to in the record as A.A.

² The Department has requested us to take judicial notice of various documents from the dependency proceedings concerning mother in Riverside Superior Court case No. RIJJ112560. Mother's counsel failed to file a timely opposition, and the request is granted.

In the detention report, the social worker stated mother had told her that she (mother) was of Native American ancestry and was currently registered with the Band of Mission Indians San Juan Capistrano, with Bureau of Indian Affairs (BIA) No. 49141. Mother filled out the JV-130 form indicating she might be a member of the “Walnenol” Tribe. On March 1, 2007, the social worker telephoned the BIA and left a voicemail message, although she did not speak with anyone directly. At the detention hearing, the court found that ICWA might apply to the case. The court detained A.C. and ordered her placed in the same foster home as mother.

The Department filed a jurisdiction/disposition report in March 2007. The foster mother had told the social worker that mother had made recent improvements in caring for A.C., but that mother still had a difficult time keeping her room clean, and she told the foster mother she felt overwhelmed. Mother was in the 11th grade, was doing well in school, and was healthy. She had experimented with methamphetamine once when she was 15 but had not used any controlled substance since then. Mother also told the social worker she did not have much information about her ancestry, and the Band of Mission Indians San Juan Capistrano was not a federally recognized tribe.

The Department filed an addendum report in May 2007 stating that in April 2007, mother and A.C. were moved to a new foster home because the former foster mother could not manage mother’s behaviors. The new foster mother told the social worker that mother was still having a difficult time keeping her room clean and meeting A.C.’s needs.

At the jurisdiction/disposition hearing, the juvenile court sustained the petition and ordered reunification services for mother. The court found that notice had been provided pursuant to ICWA and that ICWA did not apply to the case.

In October 2007, the Department filed a report for the six-month review hearing. Mother was then in 12th grade and was working at grade level. A.C. was then eight months old and was meeting all developmental guidelines. The report stated mother was doing a “great job in caring for her child.”

At the six-month review hearing, the juvenile court found that mother had made adequate but incomplete progress in alleviating the problems that had led to the dependency. The court ordered continued reunification services.

In April 2008, the Department filed a report for the 12-month review hearing. A.C. had met all developmental milestones and was very attached to mother and her extended family. However, mother had been moved to a new placement because she had been associating with gang members at school and had been threatening other girls in her foster home. She had transferred to a continuation school and had been failing to work at her grade level in high school.

In January 2008, mother took A.C. and ran away from her foster placement. A.C. was detained the next day and placed in a new foster home where she was adjusting well. Mother did not see A.C. for a few months, but mother called the Department in mid-April to inquire about the hearing date.

The Department filed an addendum report in June 2008. The report noted the court had authorized mother to be placed in a substance abuse treatment program and had ordered weekly visitation between mother and A.C. A.C. did not show any reaction to mother in the first two visits, but after that, she began to recognize and interact with mother. A.C. had been placed in a prospective adoptive home where she was doing well and had bonded with her caregivers and another child in their home.

Mother turned 18 in May 2008, and her dependency was terminated.

At the 12-month review hearing, mother told the court she wanted A.C. back in her custody. Mother admitted using marijuana since she left her foster home in January, but she had had two negative drugs tests since then. The court terminated mother's reunification services and ordered weekly visits with the proviso that if mother missed a visit or missed a class in services, the visits would be reduced to once per month.

In September 2008, the Department filed a report for the section 366.26 hearing. The social worker reported that A.C. was highly adoptable and had adjusted well to her prospective adoptive family. Mother had missed a visit in August 2008, and as a result, visitation had changed to once per month. A positive preliminary assessment of the prospective adoptive parents was attached to the report.

In November 2008, mother filed a petition under section 388 requesting the juvenile court to reinstate reunification services and liberalize visitation. In support of the petition, mother attached a certificate of completion for her parenting program, a

letter from her individual counselor, a letter from her group counselor, and results of negative drug tests.

In January 2009, the Department filed an addendum report indicating mother had not provided a current telephone number or address, so no visit had taken place in December 2008. In January 2009, mother attended the visit with relatives, but they could not communicate with A.C., who preferred to speak Spanish.

At the hearing in January 2009, the juvenile court denied mother an evidentiary hearing on her section 388 petition and denied that petition. The juvenile court found that A.C. was adoptable and terminated mother's parental rights.

B. ICWA Issues in Mother's Dependency Proceedings

As noted above, mother was herself a dependent child when A.C. was born. In mother's own dependency case, the detention report indicated that ICWA might apply to mother and her siblings because the maternal grandmother had stated she and her children were registered members of the Luiseno and Juaneno Tribes. In July 2006, Notices of Involuntary Child Custody Proceedings for an Indian Child listing mother's name, the maternal grandmother's name and birthdate, and the maternal great-grandmother's name, were sent to the BIA, to Indian Child and Family Services, and to eight separate Juaneno and Luiseno bands. In August 2006, three of the bands sent responses indicating that neither mother nor the maternal grandmother was a member or eligible for membership.

In January 2007, the maternal grandmother stated she was a member of the San Juan Band of Mission Indians in San Juan Capistrano, and she provided a BIA registration No. 49141. The BIA and the Juaneno and Luiseno Bands were re-noticed with the new information.

At the six-month review hearing in mother's dependency case, the juvenile court found that ICWA did apply. The Department filed a report for the 12-month review hearing in mother's dependency case, stating that ICWA did not apply because the tribe to which mother and her siblings belonged was not federally recognized. The social worker stated the Department had received a response from the San Juan Band of Mission Indians stating that it was attempting to become a federally recognized tribe but had not yet obtained such status. Thereafter, in August 2007, the juvenile court found that ICWA did not apply.

III. DISCUSSION

Mother contends that "the only attempt the Department made to notify any tribe that [A.C.] may be an Indian child was to leave a voice mail message at the BIA," and such attempt was legally inadequate.

The purpose of ICWA is to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families." (25 U.S.C. § 1902; Welf. & Inst. Code, § 224.) ICWA applies to any state court proceeding involving the foster care, adoptive placement, or termination of parental rights to an Indian Child. (Welf. & Inst. Code, § 224, subd. (b).) An Indian child is a child who is either a member

of a federally recognized Indian tribe or who is eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian tribe. (Welf. & Inst. Code, § 224.1, subd. (a); 25 U.S.C. § 1903(8).) When the court “knows or has reason to know that an Indian child is involved,” notice must be given to the tribe of the pending proceedings and of the tribe’s right to intervene. (25 U.S.C. § 1912(a).) However, such notice is required only to federally recognized Indian tribes. (25 U.S.C. §§ 1912(a); 1903(8).)

The Federal Register lists Indian entities that are recognized as tribes for the purpose of ICWA. (68 Fed.Reg. 68180 (Dec. 5, 2003).) The Federal Register does not list the “Walnenol” Tribe as federally recognized. As the Department recognizes, mother might have intended to identify the Juaneno Indian Tribe (the tribe the maternal grandmother identified in mother’s dependency case) or the Band of Mission Indians San Juan Capistrano. However, neither the Juaneno Indian Tribe nor the Band of Mission Indians San Juan Capistrano is listed in the Federal Register. (See 68 Fed.Reg. 68180 (Dec. 5, 2003).)

With respect to notice to a nonrecognized tribe, both parties have failed to cite published California cases directly on point. In *In re K.P.* (2009) 175 Cal.App.4th 1,³ the court held that a parent’s notice to the social worker that she was a member of a tribe that

³ *In re K.P.*, *supra*, 175 Cal.App.4th 1, was filed on June 22, 2009, after mother filed her opening brief in this appeal, but before the Department filed its respondent’s brief and before mother filed her reply brief. *In re A.C.*, *supra*, 155 Cal.App.4th 282, was filed in 2007.

was not federally recognized did not give rise to any obligation to investigate whether the tribe was affiliated with federally recognized tribes or to provide notice under ICWA. (*Id.* at pp. 4-6; *In re A.C.* (2007) 155 Cal.App.4th 282, 287 [also concluding that ICWA did not require notice to a tribe that was not federally recognized].) Both *In re K.P.* and *In re A.C.* are precisely on point, and we agree with their reasoning and conclusions. Because mother did not provide any information concerning a recognized tribe, no duty of notice arose.

To support her argument that notice was inadequate, mother cites *In re S.B.* (2008) 164 Cal.App.4th 289 and *In re Louis S.* (2004) 117 Cal.App.4th 622. Those cases are distinguishable. As discussed below, in both cases, the social services agency had information that the child had Apache ancestry and that the child might have been eligible for membership in a federally recognized tribe.

In *In re Louis S.*, *supra*, 117 Cal.App.4th 622, the social services agency had information that the child's maternal grandmother was Apache and that the child was eligible for membership in the Chiricahua Tribe, an Apache branch that was not federally recognized. (*Id.* at p. 627, 632.) The agency also had information that the Chiricahua Tribe might have merged with one or more of the federally recognized Apache Tribes. The court held that under those circumstances, the agency should have notified the BIA and the federally recognized tribe or tribes that had absorbed the Chiricahua. (*Id.* at pp. 632-633.)

Similarly, *In re S.B.*, *supra*, 164 Cal.App.4th 289, the court held that when the record contained information that the child's paternal grandmother was Mescalero Apache, the social services agency was required to contact the BIA for assistance in determining whether the child might be a member of or eligible for membership in another Apache Tribe. (*Id.* at p. 303.) Here, in contrast to the situation in *In re Louis S.* and *In re S.B.*, the record does not contain any information suggesting any possible affiliation with another federally recognized tribe, and we therefore conclude there was no error under ICWA.

Moreover, even if there had been error, it was necessarily harmless in light of the fact that extensive notice was given in mother's own dependency case, and the court in that case found in August 2007, while the present case was pending, that ICWA did not apply.

IV. DISPOSITION

The judgment is affirmed.

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HOLLENHORST

J.

We concur:

RAMIREZ

P.J.

MILLER

J.